HON'BLE SRI JUSTICE R.KANTHA RAO

C.M.A.No. 1219 of 2005

O R D E R :

This appeal has been filed by the appellant-claimant against the Award dated 23.3.2005 passed in MVOP No.167 of 2003 by the III Addl. District Judge, Kadapa (Fast Track Court, Kadapa) (MACT).

2. The facts of the case in brief are as follows:

The appellant-petitioner filed the above claim petition u/Sec.166 of M.V.Act claiming compensation of Rs.2,00,000/- with costs and subsequent interest on account of the permanent disability sustained by him in the accident. It is the case of the appellant that on 18.8.2002 at about 9.00 a.m. while he was riding a motor cycle along with one Krishnaiah-Pillion rider in order to go to Badvel and when the motor cycle reached Lakshmipalem cement road at about 9.30 a.m. the driver of the Jeep bearing No.AP-04B 1754 came in an opposite direction at high speed in a rash and negligent manner and dashed against the motor cycle due which the appellant and the pillion rider-Krishnaiah fell down and sustained injuries. Immediately, the appellant was shifted to Government Hospital, Badvel and from there to Government General Hospital, Kadapa and thereafter went to Puttur bone setting hospital. Due to the said accident, the appellant sustained fracture to his right leg at two places resulting in permanent disability due to which he is unable to walk and at best, he can walk with the assistance of walking stick. Hence, the respondents 1 and 2 are jointly and severally liable to pay the compensation to the appellant.

3. The Tribunal after framing issues and considering the evidence available on record, awarded a lumsum amount of Rs.56,000/- with proportionate interest at 9% p.a. from the date of petition till realization.

Being dissatisfied with the award of compensation granted by the Tribunal, the claimant filed the appeal seeking enhancement of compensation.

4. Heard the learned counsel for the appellant/claimant. There is no representation for the respondents.

5. Now the point for consideration is as to whether the quantum of compensation granted by the tribunal below in lumsum is just and reasonable ?

6. Since the appeal is filed challenging the award passed by the Tribunal on the ground that the compensation granted is not adequate and requires enhancement, the other aspects need not be adverted to.

7. In the claim petition, Tribunal considered the appellant to be an agricultural labourer and that he must be getting an income of Rs.3000/- per month. So far as this aspect is concerned, the tribunal below ought to have considered the income of the appellant at Rs.2000/- per month since there is no documentary proof of the alleged lease of the lands and earning income by leasing out the lands. The income of Rs.3000/- is on higher side and hence it may be taken as Rs.2000/- per month for the purpose of computing compensation.

8. The medical record issued by the doctor-P.W.2 was produced before the tribunal below by the appellant wherein it is mentioned that the appellant sustained disability of 25% which is partial and permanent in nature. P.W.2- Medical Practioner in Ortho treated the appellant and issued disability certificate. As per Ex.A2 certified copy of the wound certificate, the injured received i) diffuse swelling with tenderness over the right thigh difficult of the movements of right leg, red colour ii) diffuse swelling over the dorsum of the right foot near finger, red colour difficult of the finger movements, iii) Lacerated injury over the right knee 1” x 1/8

skin deep. Bleeding present.

9. The evidence of P.W.2-Ortho doctor before the tribunal below is that the appellant sustained fracture of femur upper end which is not united and he also found deformity at the right hip area and that right hip movements were restricted. He also found shortening of 1" of right lower limb and that muscle wasting present around the right hip and right thigh area and that the movements of his right hip were restricted and further found tenderness over right hip. According to the Doctor, ultimately the injuries caused to the appellant caused him permanent disability which the doctor assessed at 25% partial and permanent in nature.

10. It is contended by the counsel for the appellant that the tribunal below ought not to have awarded a lumpsum amount of Rs.56,000/- towards compensation for the injuries sustained by the appellant without following the multiplier method. I am of the view that in cases of this nature, the tribunal below ought to have computed the compensation basing on the multiplier method. Hence, in this appeal, the compensation is required to be computed by applying multiplier method.

11. As already noticed, the grievous injury sustained by the appellant to the right leg ultimately caused him disability. If the monthly income of the appellant is taken as Rs.2000/- his annual income comes to Rs.24,000/-. As per the Judgment in **Sarla Verma and others V.Delhi Transport Corporation and another**[1] the multiplier for the age of the 30 years (the petitioner is aged about 30 years at the time of the accident) is 17. The petitioner sustained permanent disability of 25%. The loss of earnings of the appellant is Rs.1,02,000/- (Rs.24,000 x 17 x 25/100=Rs.1,02,000). Since the appellant suffered the grievous injury to his right hip, granting a further sum of Rs.4,000/- towards pain and

suffering is just and reasonable and would meet the ends of justice. Hence, an additional amount of Rs.4,000/- is granted towards pain and suffering (total Rs.14,000/- towards pain and suffering). The amount of compensation awarded under other heads by the tribunal below being just and reasonable, does not require any interference by this court (i.e., Rs.1000/- towards transport; Rs.10,000/- towards loss of past earnings; Rs.15,000/- towards loss of future earnings). In all the petitioner is entitled for the compensation of Rs.1,42,000/- (Rs.1,02,000/= + Rs.1000/- + Rs.14,000/- + Rs.10,000/- + Rs.15,000/-= Rs.1,42,000/-).

12. As far as the interest on the compensation amount is concerned, granting interest at 9% p.a. by the tribunal below on the compensation amount of Rs.56,000/- from the date of the petition till realisation is on higher side and hence, the same is reduced to 7.5% p.a. The enhanced amount of compensation of Rs.86,000/- (Rs.1,42,000/- + Rs.56,000/- =Rs.86,000/-) shall carry interest at 6% p.a. from the date of petition till the date of realisation.

13. In view of the above, the appeal is partly allowed. No costs.

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R.KANTHA RAO, J

Dt. 24.4.2012
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[1] 2009 ACJ 1298